IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6412 OF 2004

Smt.Nirmala Nagorao Devane .. Petitioner

Versus

The Controller of Rationing
& Ors. .. Respondents

Ms.S.V.Deshmukh with Mr.S.S.Bondre for the petitioner

Mr.S.S.Mhende, A.G.P. for the respondents

**CORAM: A.P.SHAH &
S.U.KAMDAR, JJ.**

DATED: 13TH AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. By the present petition, the petitioner is challenging the order dated 3rd June 2004 by which the respondents have declined to allot the ration shop to the petitioner herein. Some of the facts briefly stated are as under:

2. Sometime in or about 1st June 2000, there was a proposal to allot about 416 new authorised ration

shops in Greater Mumbai and Thane rationing areas. Accordingly, a public notice was issued in the local newspapers. On 7th July 2000, the petitioner applied for allotment of an authorised rationing shop under the category of illiterate and divorced scheduled caste women. The said application was for an allotment of a rationing shop at Aarey Colony, Goregaon (E), Mumbai. On 12th March 2001, the Controller of Rationing Greater Mumbai rejected the request of the Petitioner for allotment of Rationing Shop. On 7th April 2001, the petitioner preferred a Revision Application under clause 30 of the Maharashtra Foodgrain Rationing (Second) Order, 1966 before the Hon'ble Minister for Food, Civil Supplies and Consumer Protection, Govt. of Maharashtra, Mantralaya, Mumbai. On 16th October 2001, the Hon'ble Minister, after hearing the parties directed the allotment of various ration shops with a condition that the petitioner should produce legal proof of divorce within one month from the date of the said order. On 23rd January 2003, in view of the order passed by the Hon'ble Minister, the petitioner and her husband approached

the Family Court at Bandra and filed a Joint Petition under Section 13B of the Hindu Marriage Act, 1955. On 1st January 2004, the Learned Judge Family Court has passed a Judgment and Decree dissolving the marriage of the petitioner and her husband by mutual consent under section 13B of the Hindu Marriage Act, 1955. On 31st January 2004, the petitioner received a certified copy of the Judgment and Decree of divorce passed by the Family Court, Bandra. On 8th February 2004, the said certified copy of divorce was submitted by the petitioner to the Hon'ble Minister in compliance with the order dated 16th October 2001. On 3rd June 2004, the impugned order has been passed rejecting the application of the petitioner for allotment of a rationing shop on the ground that the decree for divorce is produced at a belated stage and not within the stipulated time in accordance with the condition imposed by the Hon'ble Minister in his order dated 16th October 2001. It is this order dated 3rd June 2004 which is a subject matter of challenge in the present Writ Petition.

3. We have heard the parties and we are satisfied that the present case is not a bonafide case on the part of the petitioner for allotment of a ration shop. The Hon'ble Minister has while passing the order dated 16th June 2001 has inter alia observed as under:

> "Though the Applicant's husband is running an authorised Ration Shop No. 27-G-147, the Applicant has stated that she is residing separately from her husband and that she has nothing to do with the shop of her husband. The Applicant has submitted the News-paper cutting showing that she has obtained customary divorce. Moreover, the Applicant Shrimati Nirmala Dawane and her husband Shri Nagorao Dawane have submitted a Joint Affidavit dated 7.3.2000 stating therein that they have taken divorce within a period of 1 year. Though the Applicant has complied with the other Terms and Conditions prescribed by the Government for sanctioning the authorised Ration Shop, when a period of more than one year has elapsed, during the course of hearing and even thereafter, she has not submitted before me any proof showing that she has obtained divorce legally. However, considering the mental condition of the Applicant, as the Applicant has complied with the things required for shop sanctioning, I have come to the conclusion to sanction authorised Ration Shop on the condition of submitting legal proof of divorce to the Controller of Rationing, Mumbai within a month.

4. On the plain reading of the said order, it is clear that the petitioner represented that she has obtained a customary divorce prior to 7th March 2000 and produced a joint affidavit in respect of her claim before the Hon'ble Minister. We have perused the said joint affidavit and declaration dated 7th March 2000 which inter alia states as under:

> "1) We say that we were married on 3-5-1976 as per customary rites. We say that we lived happily, and out of the said wedlock, we got 2 sons, namely, (1) Dawane Pravin Nagorao, and (2) Dawane Vijay Nagorao. we say that some indifferences and family disputes arose between us and could not carry on the family life; hence, we mutually decided to live separately about six months back. We have further decided to keep one - one son with each of us. We say that Pravin Nagorao shall be with Nagorao Tulsiram and Vijay Nagorao shall be with his mother Nirmala Nagorao. We are living separately since last about 6 months and have got mutual customary divorce. We say that after about one year we shall get the legal divorce also."

5. Thus, before the Hon'ble Minister the case of the petitioner was that even prior to 7th March 2000 she has obtained customary divorce. However,

in the present petition at Exhibit (B) the document of customary divorce has been filed which is infact dated 26th October 2001 i.e. after the order passed by the Minister on 16th October 2001. It is on this basis, the application was made under section 13B before the Family court, Bandra seeking a dissolution of marriage and decree for divorce. The said application was made only on 23rd January 2003 i.e. after two years from the date of the order passed by the Hon'ble Minister and obtained a decree by mutual consent on 1st January 2004.

6. On the aforesaid facts, we are satisfied that the entire case of a divorce is bogus so as to make the petitioner eligible for the purpose of allotment of a ration shop. The documents produced and the statement and contention made before the Hon'ble Minister are not in consonance with each other nor they are in consonance with the averments made in the present petition.

7. In the light of the aforesaid facts, we do not see any reason to interfere with the order. In any

view of the matter, the order passed by the respondents of refusing to grant allotment of ration shop is legal and valid because under the order dated 16th October 2001, the petitioner was required to produce proof of dissolution of the marriage within a period of one month. The petitioner has produced the said proof almost after a period of 2 years 6 months and therefore the order impugned herein rejecting the request of the petitioner is legal and valid. It goes without saying that for the purpose of allotment of ration shop infact the petitioner should be eligible as on the date of making the allotment and it is not open to create document subsequently with a view to make the petitioner eligible though she was not so eligible on the date of application.

8. In the light of the aforesaid circumstances, we do not see any reason to exercise our writ jurisdiction in the present case, under article 226 of the Constitution of India and thus, we dismiss the petition. We however, make it clear that there shall be no order as to costs.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.